

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KERN HIGH SCHOOL DISTRICT.

OAH CASE NO. 2013090561

ORDER OF DETERMINATION OF
SUFFICIENCY OF DUE PROCESS
COMPLAINT

On September 17, 2013, Parent on behalf of Student (Student) filed with the Office of Administrative Hearings (OAH) a Due Process Hearing Request¹ (complaint) naming the Kern High School District (District) as respondent.

On October 1, 2013, the District filed a Notice of Insufficiency (NOI) as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint.² The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of Title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education (FAPE) to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time.³ These requirements prevent vague and confusing complaints, and promote fairness by providing the

¹ A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under Title 20 United States Code section 1415(b)(7)(A).

² 20 U.S.C. § 1415(b) & (c).

³ 20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).

named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation.⁴

The complaint provides enough information when it provides “an awareness and understanding of the issues forming the basis of the complaint.”⁵ The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings it authorizes.⁶ Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge.⁷

DISCUSSION

Student’s complaint contains a single problem: “As evidenced by the events of [Student’s] first day of school, staff was clearly negligent and inadequately trained. The teacher refused to implement [Student’s] Behavior Support Plan. My concerns at the 8/27 IEP were summarily dismissed.”

Student’s proposed resolution is: “[Student] requires positive supports in an ABA setting; therefore, I would like to see him continue placement at Valley Achievement Center. The casual indifference and blatant ignorance displayed by the District re: 504 is alarming and I will not subject [Student] to these violations.”

On October 1, 2013, the District filed this NOI and Response to Due Process Complaint. In the response, the District stated the following facts:

Student is 13 years old and has been eligible for special education under the category of autistic-like behaviors with a secondary category of intellectual disability. Student matriculated with the District at the beginning of school year 2013-2014.

⁴ See, H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.

⁵ Sen. Rep. No. 108-185, *supra*, at p. 34.

⁶ *Alexandra R. v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, No. 06-cv-0215-JL) 2009 WL 2957991 at p.3 [nonpub. opn.]; *Escambia County Board of Educ. v. Benton* (S.D.Ala. 2005) 406 F. Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, No. 8:04CV2657T24EAJ) 2005 WL 2850076 at p. 3[nonpub. opn.] ; but cf. *M.S.-G. v. Lenape Regional High School Dist.* (3d Cir. 2009) 306 Fed.Appx. 772, at p. 3[nonpub. opn.].

⁷ Assistance to States for the Education of Children With Disabilities and Preschool Grants for Children With Disabilities, 71 Fed.Reg. 46540-46541, 46699 (Aug. 14, 2006).

Student was initially placed in a Separate Day Class on the high school campus. After the first day, an IEP team meeting was held and Student was placed at the Valley Achievement Center (VAC), a nonpublic school operated by the Kern County Regional Center. Student's parent (Parent) consented to this 30 day interim placement at the VAC.

In the NOI, the District contends that the complaint is 'so uncertain that it does not provide the District with sufficient information to know how to prepare for hearing.' As there are no facts alleged relating to the problem. Also, the District contends that the proposed resolution is not sufficient.

The facts alleged in Student's complaint are sufficient to put the District on notice of the issue forming the basis of the complaint. Student is contending that the District failed to implement his Behavior Support Plan (BSP). Thus, Student's complaint identifies the issue and adequate related facts about the problem to permit District to respond to the complaint, which it did, and participate in a resolution session and mediation.

Therefore, Student's complaint is sufficient to state a claim that he was denied a free appropriate public education because the teacher failed to implement the BSP.

Student's proposed resolution requests that Student be continued to be placed at VAC. A complaint is required to include proposed resolutions to the problem, to the extent known and available to the party at the time. (20 U.S.C. §1415(b)(7)(A)(ii)(IV).) The proposed resolution stated in Student's complaint is not well-defined. However, Student has met the statutorily required standard of stating a resolution to the extent known and available to him.⁸

ORDER

1. The complaint is sufficient under Title 20 United States Code section 1415(b)(7)(A)(ii).
2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

Dated: October 02, 2013

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings

⁸ This ruling is limited to the sufficiency of the complaint as pled and does not address whether the issue claimed is moot.

